

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARSHA D. STERLING**

Claimant

VS.

**CESSNA AIRCRAFT COMPANY**

Respondent

Self Insured

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**Docket No. 256,534**

**ORDER**

Claimant appeals Administrative Law Judge John D. Clark's January 11, 2001, preliminary hearing Order.

**ISSUES**

This is a claim for either an occupational disease or an accidental injury allegedly resulting from exposure to chemical fumes in the work environment. Claimant requested temporary total disability benefits and medical treatment for severe sinus pain, headaches, nausea and fatigue. She alleges the symptoms were either caused by her exposure to chemicals at work or the exposure aggravated a preexisting sinus condition causing the symptoms.

The ALJ found claimant had a long history of sinus and allergy problems not related to her work. He denied claimant's request for preliminary hearing benefits based primarily on the medical report from occupational and environmental medicine physician Marc Wilkenfeld, M.D., who was employed by the respondent. Dr. Wilkenfeld concluded that the low level chemical exposure claimant experienced at work could not have caused claimant's current symptoms or could not have aggravated her preexisting sinus condition resulting in her current symptoms.

On appeal, claimant contends she proved, through her testimony and the medical treatment records admitted into evidence, that her current symptoms were either caused or her preexisting sinus condition was aggravated and made worse by the exposure to chemicals at work.

The respondent did not file a brief before the Appeals Board (Board). But the respondent's attorney argued, at the close of the preliminary hearing, that claimant's current symptoms and the reason she currently is unable to work is because of claimant's preexisting sinus condition and allergies not related to her work. Respondent asserts this

conclusion is supported by occupational and environmental medicine physician Dr. Wilkenfeld's December 1, 2000, report admitted into the preliminary hearing record.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the claimant's brief, the Board makes the following findings and conclusions:

The Board finds the ALJ's preliminary hearing Order should be affirmed. At this point in the proceedings, the Board concludes claimant has failed to prove that the level of trichloroethylene chemical exposure at work either caused or aggravated claimant's preexisting sinus condition resulting in her current symptoms.

Claimant has a history of chronic sinusitis and allergic rhinitis. The medical treatment records admitted into evidence show claimant has been treated for those conditions as far back as November 5, 1997. In the past, those conditions caused claimant to have symptoms similar to the symptoms she is presently experiencing such as headache, sinus pain, facial pain, sneezing, coughing, nasal discharge, sore throat, and eye irritation.

In addition, respondent admitted into evidence a medical report from occupational and environmental medicine physician Mark Wilkenfeld, M.D., who reviewed claimant's medical treatment records and the air sample results of the level of trichloroethylene chemical exposure in claimant's department. Dr. Wilkenfeld concluded the air testing results showed levels of chemical exposure far below which would cause any symptoms or aggravate claimant's preexisting condition. Respondent admitted into the evidence an air sample result report dated June 9, 2000. Based on air samples collected on May 15, 2000, from the breathing zone of claimant, there was a total trichloroethylene chemical exposure of .70 per million parts of air (PPM). The exposure limit on the Material Safety Data Sheet is 50 PPM compared to the only .70 PPM as found in claimant's breathing zone.

The Board is mindful that claimant argues the respondent's air sample testing procedure was unreliable and faulty and should not be given any weight in deciding compensability of this case because the test results were only taken over a 3.5 hour period of time. But the Board finds there is no contradictory evidence that claimant has presented in the record to question the validity of the air sample testing except for claimant's unsupported assertion the exposure time period was not long enough for valid test results.

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ John D. Clark's January 11, 2001, preliminary hearing Order should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ of April, 2001

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BOARD MEMBER

Copies to:

Beth Regier Foerster, Claimant's Attorney

Edward D. Heath Jr., Respondent's Attorney

John D. Clark, Administrative Law Judge

Phillip S. Harness, Workers Compensation Director